

Remarks

Reconsideration of the application is respectfully requested in view of the following remarks. Claims 1-33 are pending in the application. No claims have been allowed. Claims 3, 4, and 29 have been objected to as depending from rejected claims, but are identified as appearing to be allowable. Claims 1 and 28 are independent.

Amendments

Claims 1 and 28 have been amended for clarification and to correct typos. No new matter has been added.

Statutory Matter Rejection

Claims 1, 2, 5-28, and 30-33 have been rejected by the October 21, 2004 office action ["Action"] under 35 U.S.C. § 101 for non-statutory subject matter. The Examiner alleges that the claims fail to accomplish or be limited to a practical application, as the claims are "directed only to mathematical manipulations of data providing no useful concrete tangible result." (Action, page 2-3.) The Action also points out that claims which manipulate an abstract idea or perform a purely mathematical algorithm are not limited to a practical application unless they produce a concrete, tangible, and useful result. (Action, page 4.) For the reasons below, Applicants respectfully traverse the Examiner's rejection of the claims and request that claims 1-33 be allowed.

Independent claims 1 and 28

The Action does not make a prima facie case why the claims do not provide a concrete, tangible, and useful result. "Office personnel have the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas of does not produce a useful result." (MPEP 2106.II.) "Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. 101. Further, when such a rejection is made, Office personnel must expressly state how the language of the claims has been interpreted to support the rejection." (MPEP 2106.II.)

In page 3 of the Action, the Examiner states only that the claims are “directed only to mathematical manipulations of data providing no useful, concrete tangible result.” Nowhere else in the rejection does the Examiner discuss the substance of the claims. Additionally, because the statement does not discuss the language of any claim, Applicants fail to see how this expressly states how the language of the claims has been interpreted to support the rejection. Thus, the Examiner does not appear to have made a *prima facie* case for rejecting the claims, as required by MPEP 2106. For at least this reason, Applicants request that the rejection of claims 1, 2, 5-28, and 30-33 be withdrawn, and that claims 1-33 be allowed.

Claim 1 recites statutory subject matter because it requires measurements of physical objects. A claimed computer-related process is statutory if it “result[s] in a physical transformation outside the computer for which a practical application... is either disclosed... or would have been known.” (MPEP 2106.IV.B.2.(b).) One example of such a physical transformation is “one that requires the measurements of physical objects or activities to be transformed outside of the computer into computer data.” (MPEP 2106.IV.B.2.(b).ii.)

Claim 1, as amended, recites “obtaining a known good set of samples of preliminary moisture content data, the moisture content data obtained from measurements of moisture content data from wood dried in the kiln.” Applicants note that the language recited in claim 1 requires the measurement of moisture content data from wood dried in a kiln and that such data is clearly a measurement of a physical object. Applicants also note the close similarity to the measurements recited in claim 1 and computerized axial tomography data, which is discussed in MPEP 2106.IV.B.2.(b).ii as an example of one statutory claimed process.

Applicants finally note that claim 1, as amended, recites “creating a statistical model which demonstrates the behavior of the kiln.” Thus, claim 1 recites creating a useful, tangible, and concrete result. For at least these reasons, claim 1 recites statutory subject matter and is allowable. Applicants request the withdrawal of the rejection of claim 1.

Claim 28 claims a computer-readable medium containing a program, and is thus statutory. Claim 28, as amended, recites “A computer-readable medium containing instructions that, when executed by a computer, cause the computer to perform a method for monitoring a kiln used for drying wood.”

MPEP 2106.IV.B.1.(a) states, however, that “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer..., and *is thus statutory.*” Because claim 28 is directed toward such a computer-readable medium, claim 28 is allowable and Applicants request withdrawal of the rejection of claim 28.

Dependent claims

Claims 2, 5-27, and 30-33 are also rejected for non-statutory subject matter. For at least the reasons given above for claims 1 and 28, from which claims 2, 5-27, and 30-33 depend, these claims recite statutory subject matter and are thus allowable.

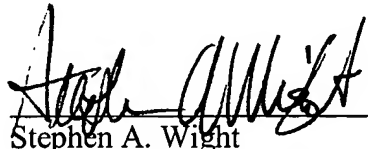
Claims 3, 4, and 29 are objected to as being dependent on a rejected base claim. For at least the reasons given above for claims 1 and 28, from which claims 3, 4, and 29 depend, these claims are allowable.

Conclusion

For at least the reasons above, the rejections of claims 1, 2, 5-28, and 30-33 should be withdrawn and claims 1-33 should be allowed. Applicants respectfully request such action.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By 
Stephen A. Wight
Registration No. 37,759

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 228-9446